IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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CIVIL WRIT No. 2377 of 2006

NAVEEN DAGA

V/S

A.D.J.(FAST TRACK)NO.3,BIKANER & ORS.

Mr. VINEET JAIN, for the appellant / petitioner

Mr. SAJJAN SINGH, for the respondent

Date of Order : 26.4.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

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Heard learned counsel for the parties.

Though the matter comes up for consideration of stay as the writ petition was admitted on 18.5.2006. However, in view of the submissions of the learned counsel for the parties, and on their request, and in view of the fact that the matter involved is very small, the writ petition has been decided finally at this stage itself.

The precise controversy in the matter is as to whether the document Annexure-3, which is the basis of the suit, is a promissory note, or not, inasmuch as if it is found to be promissory note then being unsufficiently stamped it would not be admissible in evidence, and if it is any other instrument, then it may be admitted in evidence, subject to payment of deficit stamp duty and leviable penalty.

The learned trial court vide Annexure-4 has found the document to be promissory note. I have gone through the document Annexure-3 which reads as under:-

> "Shri Naveen Daga,
> 'SAUBHAG'
> C-7, Sadul Ganj,
> BIKANER.
>
> Dear Sir,
>
> Re: Loan A/c. of Rs. 1,25,000/-
>
> We acknowledge with thanks the receipt of Rs. 1,25,000/- (One lac twenty five thousand) through Cheque No. CG 632967 dated 4 th July, 1989 as loan repayable in 6 months and the interest is payable per month @ 16% p.a. .
>
> Thanking you,
>
> Yours faithfully,
> For JAY GEE & COMPANY,
>
> sd/-
> PARTNER."

The promissory note has been defined in Section 4 of the Negotiable Instruments Act, 1981. The definition reads as under:-

> 4.“Promissory Note- A “promissory note” is an instrument in writing [not being a bank-note or a currency-note] containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.
>
> Illustrations
>
> A signs instruments, in the following terms:-
>
> (a) “I promise to pay B or order Rs. 500.”
>
> (b) “I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received”
>
> (c) “Mr.B. I.O.U. Rs.1,000”
>
> (d) “I promise to pay B Rs. 500 and all other sums which shall be due to him”
>
> (e) “I promise to pay B Rs. 500 first deducting there out any money which he may owe me.”
>
> (f) “I promise to pay B Rs. 500 seven days after my marriage with C.”
>
> (g) “I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum.”
>
> (h) “I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."
>
> The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and

(h) are not promissory notes.”

A look at the above definition shows that apart from giving definition eight illustrations have been given, and it is enacted that out of eight illustrations, the instruments marked '(a)' and '(b)' are described to be promissory note, while instruments marked as respectively '(c)(d)(e)(f)(g)(h)' are not promissory note.

A bare look at the document Annexure-3 shows that, the document does not fall within Clause '(a)' or '(b)', inasmuch as though it contains an acknowledgement about executor being indebted, and also contains promise to pay the amount, however, it is not payable on demand, rather it is payable in six months, and therefore, it cannot be said to be promissory note.

In that view of the matter, the writ petition is allowed, and the impugned order is set aside. The learned trial court is directed to determine the nature of the document, and assess the leviable stamp duty, and penalty , and if that amount is deposited by the plaintiff the document may be admitted in evidence, otherwise it may be excluded. The learned trial court is directed to expeditiously proceed with the suit.

( N P GUPTA ),J.

/Sushil/